



29 APR 2003

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In re Application of GIRAUD et al
U.S. Application No.: 09/869,768
Int. Application No.: PCT/FR99/03317
Int. Filing Date: 30 December 1999
Priority Date: 31 December 1998
Attorney Docket No.: CR1PCT/lw
For: DISPENSER OF OBJECTS

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DECISION

This is in response to applicant's "Renewed Petition Under 37 CFR § 1.47(a)" filed 11 February 2003.

BACKGROUND

On 30 December 1999, applicant filed international application PCT/FR99/03317, which claimed priority of an earlier France application filed 31 December 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 13 July 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 21 July 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 July 2001 (30 June 2001 was a Saturday).

On 29 June 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 07 September 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 06 February 2002, the DO/EO/US mailed a duplicate Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905).

On 24 May 2002, applicant filed a response to the Notification of Missing Requirements mailed 06 February 2002, including a petition under 37 CFR 1.47(a).

On 26 July 2002, the DO/EO/US mailed a Notice of Abandonment, which stated that the present application is abandoned for failure to timely respond to the "Notice to File Missing Parts (Notice) mailed on 02/07/2002".

On 09 August 2002, applicant filed a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

On 23 August 2002, this Office mailed a decision dismissing the 09 August 2002 petition, vacating the 26 July 2002 Notice of Abandonment, and directing the DO/EO/US to prepare a Notification of Abandonment (Form PCT/DO/EO/909).

On 29 August 2002, applicant filed a renewed petition under 37 CFR 1.181.

On 30 August 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements mailed 07 September 2001.

On 16 September 2002, applicant filed a supplement to the renewed petition under 37 CFR 1.181.

On 18 September 2002, this Office mailed a decision granting the 16 September 2002 petition under 37 CFR 1.181 and dismissing the 24 May 2002 petition under 37 CFR 1.47(a).

On 11 February 2002, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The present renewed petition states that inventor Jean-Pierre Giraud refuses to sign the declaration. However, petitioner has not demonstrated that a bona fide attempt was made to present a complete copy of the application papers (including specification, claims, drawings, and oath/declaration) to Giraud for signature. Although the letters sent to Giraud on 30 January 2002, 21 February 2002, and 05 November 2002 state that powers of attorney were enclosed, no evidence has been presented which illustrates that the specification, claims, and drawings have been sent to Giraud. Furthermore, although one or more of the letters referred to the "urgency" of the matter, none of the letters indicated a date by which Giraud was required to respond, nor did any of the letters state that failure to respond by that date would be treated as a refusal to sign. Thus, it would be unreasonable to conclude at the present time that Giraud refuses to join in the application.


CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of the petition under 37 CFR 1.47(a) is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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